

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Rajiv Vs. Sumer Singh & others

S.B.CIVIL MISC. APPEAL NO.833/2006

Against the award dated 21.01.2006
made by the Motor Accidents Claims
Tribunal, Balotra in Claim Case
No.145/2001.

Date of Judgment : 18th December 2006

PRESENT

REPORTABLE

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Rajesh Panwar for the appellant
Mr. Anil Bachhawat for the respondent No.3

BY THE COURT:

In this appeal by the claimant, only the question regarding pendente lite interest being the matter for consideration, a brief reference to the background facts would suffice.

On 25.05.2001, the claimant-appellant Rajiv, while riding his motorcycle with one Suresh Kumar on Balotra-Pachpadra road, sustained grievous injuries on being hit by an oncoming jeep bearing registration No. RJ 19 T 937. The appellant and so also the other injured Suresh Kumar submitted respective

applications making claim for compensation against the driver, owner and insurer of the offending jeep.

The Tribunal after consolidating trial of the two claim cases pertaining to the same accident and taking evidence proceeded to find that the accident occurred for rash and negligent driving of the jeep driver Sumer Singh. In relation to the present appellant Rajiv, the Tribunal also proceeded to find with reference to the injury report Ex. 5 that he had suffered extensive injuries and from the X-ray report Ex. 19 that there were fractures of both tibia and fibula bones of his right leg; and that the claimant has established that he had been operated upon and despite taking treatment at different places has not been cured; and that the Junior Specialist of Orthopedic department at Government Hospital, Barmer has certified his permanent disablement at 25%. With reference to the oral and documentary evidence on record, the Tribunal found the claimant-appellant entitled for compensation for pecuniary and non-pecuniary losses in the sum of Rs.1,91,000/-.

However, on the question of awarding of interest, the Tribunal proceeded to observe that the issues were framed in the case on 12.09.2003 and the claimants concluded their evidence on 28.04.2005; that ordinarily about 3½-4 months' period was sufficient for the applicants to produce evidence

and the claimants were responsible for the delay of 2¼ years for leading evidence and, therefore, they were not entitled for interest for this period. The Tribunal observed,-

“पत्रावली का अवलोकन करने से प्रकट होता है कि इस अधिकरण द्वारा वाद बिन्दुओं की रचना की जाकर पत्रावली प्रार्थीगण की साक्ष्य में 12.9.2003 को नियत की गई थी किन्तु प्रार्थीगण ने अपनी साक्ष्य दिनांक 28.4.2005 को समाप्त की है। साधारणतया 3½-4 माह का समय प्रार्थीगण को साक्ष्य प्रस्तुत करने के लिये पर्याप्त है इससे अधिक जोदेरी करीब 2¼ वर्ष की प्रार्थीगण की साक्ष्य लेखबद्ध करने में हुई है उसके लिये प्रार्थीगण खुद जिम्मेवार है। इसलिये इस अवधि का ब्याज प्रार्थीगण को देय नहीं है। क्लेम पंजीकरण की तिथि से शेष अवधि का (उक्त अवधि को छोड़ते हुये) 6 प्रतिशत वार्षिक दर से ब्याज दोनों प्रार्थीगण प्राप्त करने के पात्र है।”

The Tribunal, therefore, proceeded to allow compensation to the claimant-appellant at Rs.1,91,000/- and allowed him interest at the rate of 6% per annum from the date of filing of claim application, i.e. 15.09.2001 barring the said period of 2¼ years.

While considering this appeal by the claimant for motion-admission, record was sent for; and after perusal of record, this Court found that the quantum of compensation awarded by the Tribunal in the sum of Rs.1,91,000/- called for no modification; however, notices for final disposal were issued on 11.09.2006 only on the question of denial by the Tribunal of interest on the award amount for a period of over two years while observing,-

"Having regard to the facts and circumstances of the case, this Court is of opinion that so far the quantum of compensation awarded by the Tribunal in the sum of Rs. 1,91,000/- is concerned, the award calls for no interference in appeal and there appears no scope for enhancement. However, so far denial of the interest by the Tribunal on the award amount for a period of over two years is concerned, the same does require consideration, therefore, issue notice for final disposal on this limited point."

Learned counsel Mr.Rajesh Panwar appearing for the appellant and learned counsel Mr.Anil Bachhawat appearing for the respondent-insurer have been heard in relation to limited point involved in this appeal and record of the case has been examined.

Having given a thoughtful consideration to the entire matter, this Court is clearly of opinion that the Tribunal has seriously erred in depriving the claimant-appellant of reasonable pendente lite interest.

Ordinarily, in a vehicular accident claim case, the claimant is entitled for interest on the award amount from the date of filing of the claim application as envisaged by Section 171 of the Motor Vehicles Act and such component of interest should not be denied unless the claimant could be said to have intentionally delayed the disposal of the claim application. There appears no reason or justification in this

case for which the Tribunal has chosen not to award reasonable interest to the claimant for the entire period from the date of filing of claim application until the date of payment.

In the present case, it is noticed that after framing of issues on 28.07.2003, several dates have been adjourned for different reasons. Of course, on 12.09.2003 claimants sought time but on the next date i.e. 16.10.2003, the learned Presiding Officer of the Tribunal was on leave. Obviously, even if any witness was produced, his statements could not have been recorded. Again, time was sought on 21.11.2003 but yet again on the next date of 19.12.2003, the Presiding Officer of the Tribunal was not available. Then on 13.02.2004, insurer sought permission under Section 170 to contest the matter on merits that was granted and the other claimant Suresh Kumar AW-1 deposed before the Tribunal. Then, of course, adjournments were sought and granted for production of evidence from 25.03.2004 to 19.08.2004. Then on 24.09.2004 the claimants moved an application for production of documents and the application was allowed on 27.10.2004. Then again, adjournments were granted on 01.12.2004, 07.01.2005 and 11.02.2005 for evidence but on 18.03.2005 at the request of the present appellant, requisition was issued to the Chief Medical & Health Officer, Barmer for issuance of disablement certificate after medical examination.

An adjournment was sought on 01.04.2005 and then claimant deposed on 28.04.2005 and closed his evidence. It may be noticed that the doctor concerned had issued the disablement certificate Ex.146 only on 15.04.2005. 25% permanent partial disablement the claimant-appellant has been certified with reference to continuous pus discharging from lower part of his right leg, restriction of right ankle movement and his being unable to stand on affected limb and difficulty in climbing stairs and squatting. The doctor found that the claimant had suffered compound comminuted fracture of right leg bone and was still under treatment and his X-ray of March, 2005 showed non-union of right fibula and malunited fracture of right tibia with Osteomyelitic changes.

It is noteworthy that in this case the Tribunal has referred to the documentary evidence regarding the injuries and treatment of the claimant-appellant and has found him having undergone regular treatment at Jodhpur, Samdari, Jaipur and at Ahmedabad Civil Hospital; and has found proved the fact that claimant was under treatment with Civil Hospital at Ahmedabad as shown by the report Ex.140; however, the Tribunal has altogether omitted to look into the date of the said document Ex.140 and of its companion documents like CT scan Report Ex.141. It is obvious from the said reports that as on 10.04.2004 the claimant was undergoing treatment at Civil

Hospital, Ahmedabad and was taken for CT scan on 10.05.2004. The CT scan report Ex.141 dated 10.05.2004 shows the claimant being under the trauma of after-effects of the injuries and states,-

“IMPRESSION- Findings are in favour of chronic osteomyelitis with soft tissue infection.”

Before abruptly concluding that the claimant was required to be deprived of the interest amount for the period between framing of issues and recording of evidence; i.e. 12.09.2003 to 28.04.2005, the Tribunal ought to have considered that during this period, the claimant was not enjoying the vacations, but was undergoing treatment under the force of circumstances. As noticed above, even in the month of April 2005, the doctor examining the claimant at Barmer has found that the claimant was suffering the after-effects of the injuries including unabated infection.

It is noticed by the observations of the Tribunal in the impugned award that the claimant made a claim for future treatment expenditure with the submissions that the doctors have opined for leg amputation; to which the Tribunal suggested that if amputation be necessary, then the claim be got decided only after such amputation; and the counsel for the claimant did not agree to such suggestion. Be that as it

may, from the kind of injuries suffered in the accident and the extensive treatment undergone by the claimant and his continuous pains and sufferings, it does not appear that the claimant intentionally delayed disposal of his claim application. The observations made by the Tribunal for denying interest for 2¼ years with mere reference to the count of months and dates are difficult to be appreciated and cannot be approved.

The provisions of Section 171 of the Motor Vehicles Act, 1988 have specifically been enacted so as to empower the Claims Tribunal to order awarding of simple interest at the reasonable rate from a date not earlier than the date of making the claim and this Court is of opinion that it shall be a travesty of justice if the provisions so contained in the beneficial legislation be not given their true meaning and effect; and if award of interest be curtailed with mere counting of months and days while ignoring the ground realities.

The observations by the learned Tribunal that a particular period of about 4 months is ordinarily sufficient for leading evidence, to say the very least, are unrealistic and are not correct even in abstract theory what to say of practice. Placing such kind of a stopwatch over the trial of a vehicular accident claim case would hardly be compatible with the requirements of interest of justice.

The rules of procedure are intended to sub-serve the cause of justice and from the record of the Tribunal it appears that in the interest of justice itself time was granted by the Tribunal to the claimant; and the claimant was attempting to prosecute the claim application despite undergoing traumatic conditions. In the overall facts and circumstances, it does not appear that the claimant with any ill motive or intention elongated the trial of the claim case and there appears no justification for depriving him of interest from the date of filing of the claim application until the date of payment.

Moreover, once the Tribunal has exercised its discretion in awarding interest from the date of making of claim application, slashing out a part of such interest component, of the period between framing of issues and closure of evidence of the claimant, cannot be said to be a sound exercise of discretion.

The proposition of depriving the claimant-appellant of interest for the period of 2 ¼ years is disapproved.

As a result, this appeal is allowed to the extent indicated above. While award of compensation in the sum of Rs.1,91,000/- to the claimant is maintained, the stipulation of depriving the claimant of interest for 2¼ years is set aside and the claimant is held entitled for interest at the rate of 6% per

annum from the date of filing of claim application until payment. Having regard to the circumstances of the case, parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

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